

Decision 00-09-040 September 7, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the
Functioning of the Wholesale Electric Market and
Associated Impact on Retail Rates.

Investigation 00-08-002
(Filed August 3, 2000)

**OPINION EXPANDING RATE STABILIZATION PLAN FOR
SAN DIEGO GAS & ELECTRIC COMPANY**

Summary

On August 21, 2000, we issued Decision (D.) 00-08-037. In response to recent legislation, we adopt an expanded rate stabilization plan beginning June 1, 2000 and extending through December 31, 2002. Assembly Bill (AB) 265 adds Section 332.1 to the Public Utilities Code and is an urgency statute. This legislation, thus, is effective immediately. Consistent with Assembly Bill (AB) 265, signed into law on September 6, 2000 by Governor Davis, the rate stabilization plan will ensure that San Diego Gas & Electric Company (SDG&E) establishes a ceiling of six and five-tenths (\$.065) cents per kilowatt-hour (kWh) for the energy component of electric bills for its residential, small commercial, and lighting customers. This ceiling is retroactive to June 1, 2000 and shall be in effect through December 31, 2002, at a minimum. We also order that this investigation be broadened to specifically address the issues raised in Assembly Joint Resolution (AJR) 77.

Background

In D.00-08-037, we adopted a bill stabilization plan that consisted of the following elements:

“SDG&E will cap residential bills so that a customer consuming 500 kWh of electricity in a month will receive an electric bill not to exceed \$68 until the end of January 2001. The cap in residential bills will then step up to \$75 until the end of December 2001. All residential customers consuming electricity at amounts in excess of 500 kWh per month will face market rates for all consumption above 500 kWh.

“In implementing this cap via tariffs, SDG&E shall propose a proration mechanism on prices in reaching the 500 kWh cap so that those consumers using lesser amounts of energy also get the benefit of the capped prices. In instituting this bill cap it is our intent for example, that a customer using 200 kWh to pay the same per kWh charge as a customer who uses 500 kWh. We wish to avoid the perverse result that such a consumer have a \$50 bill while the larger consumer gets capped at \$68.

“We are also committed to ensure that inland customers of SDG&E, whose dependence on air conditioning is greater, have a kWh cap which is not punitive. What we adopt today is based on average demographic data (including coastal regions where there is no air conditioning load) that does not differentiate between this distinct regional load profile. Therefore, we direct SDG&E to promptly file a petition to modify today’s decision to adjust the residential cap to reflect demographic data by region in order to arrive at a fair & equitable cap for SDG&E’s inland customers. We direct SDG&E to file with its petition information based on zip code locations and other temperature zone information with usage profiles so that we may adjust the 500 kWh cap as necessary, retroactive to June 1, 2000.

“SDG&E will cap commercial bills so that a commercial customer consuming 1500 kWh per month will receive an electric bill not to exceed \$220. All commercial customers consuming electricity at

amounts in excess of 1500 kWh will face market rates for all consumption above 1500 kWh.

“We remain concerned that this cap on commercial bills may not provide relief to the medium-sized commercial customers. It is our intent that it do so. Therefore, we instruct SDG&E in a petition to modify to include load profile data on commercial customer classes and to prepare programs to ensure we may tailor the bill stabilization plan to embrace such medium sized commercial customers, retroactive to June 1, 2000. SDG&E should also include the same regional load profile data for inland versus coastal commercial customers as we required to assess adjustments to the residential kWh cap. If the data shows a need for adjustments to the commercial cap, we shall make such adjustments retroactive to June 1, 2000.

“All revenue shortfalls resulting from these bill caps should be booked to the Transition Cost Balancing Account. In this account, any additional revenues arising from the sale of power by SDG&E’s current generation assets, such as SONGs and long-term contracts, during periods of high prices will automatically offset a portion of these revenue shortfalls.

“The residential and commercial bill caps shall apply to billing for energy consumed commencing on and after June 1, 2000. In order to implement the bill caps for the period prior to issuance of this Decision, SDG&E shall provide a credit on a future bill issued no later than September 30, 2000. The credit for each customer shall consist of the amount previously billed excess of the bill caps imposed by today’s order. The credit shall be provided whether or not the customer has paid the prior bill. Concurrently with providing the bill credit, SDG&E shall credit its TCBA in an equivalent amount. Future adjustments to the bill caps should be handled in this manner.

“San Diego should file comments by September 30 proposing a plan to implement a Levelized Payment Plan on a default basis. Such a plan may include a phase-in, if necessary. The plan should also propose procedures and communications strategies to reduce

customer confusion. For example, the migration plan could include mail in ballots that would permit the customers to “opt-out” of the LPP, but failure to act would result in enrollment in the LPP. The plan should also identify the financial consequences of this change in billing practices and the costs associated with the modifications to the LPP. Such a plan may use forecasts to set bill levels to ensure that participants do not face sudden bill escalations. Finally, the filing should include projections on bills for residential customers consuming 500 kWh per month and commercial customers consuming 1500 kWh per month.” (*Id.*, mimeo. at pp. 5-8.)

Legislation

AB 265 reads as follows:

SECTION 1.

“(a) The Legislature finds and declares that the San Diego Gas and Electric Company is the only electrical corporation in this state whose customers are no longer protected by a statutorily imposed rate freeze, and that those customers alone are therefore subject to severe economic hardship because of unprecedented bill volatility and extraordinarily high rate levels.

“(b) It is the intent of the Legislature to protect against a simple deferral of payment by future customers by establishing incentives for prudent procurement by the San Diego Gas and Electric Company, encouraging appropriate action by federal and state oversight agencies, and offsetting any undercollection in the balancing accounts with revenues associated with sales of energy from utility owned or managed generation assets.”

SECTION 2.

Section 332.1 is added to the Public Utilities Code, to read:

“332.1(a). (1) It is the intent of the Legislature to enact Item 1 (revised) on the commission’s August 21, 2000 agenda, entitled “Opinion Modifying Decision (D.) D.00-06-034 and D.00-08-021 to Regarding Interim Rate Caps for San Diego Gas and Electric Company,” as modified below.

“(2) It is also the intent of the Legislature that to the extent that the Federal Energy Regulatory Commission orders refunds to electrical corporations pursuant to their findings, the commission shall ensure that any refunds are returned to customers.

“(b) The commission shall establish a ceiling of six and five-tenth cents (\$.065) per kilowatt hour on the energy component of electric bills for residential, small commercial, and street lighting customers of the San Diego Gas and Electric Company, through December 31, 2002, retroactive to June 1, 2000. If the commission finds it in the public interest, this ceiling may be extended through December 2003 and may be adjusted as provided in subdivision (d).

“(c) The commission shall establish an accounting procedure to track and recover reasonable and prudent costs of providing electric energy to retail customers unrecovered through retail bills due to the application of the ceiling provided for in subdivision (b). The accounting procedure shall utilize revenues associated with sales of energy from utility-owned or managed generation assets to offset an undercollection, if undercollection occurs. The accounting procedure shall be reviewed periodically by the commission, but not frequently than semiannually. The commission may utilize an existing proceeding to perform the review. The accounting procedure and review shall provide a reasonable opportunity for San Diego Gas and Electric Company to recover its reasonable and prudent costs of service over a reasonable period of time.

“(d) If the commission determines that it is in the public interest to do so, the commission, after the date of the completion of the proceeding described in subdivision (g), may adjust the ceiling from the level specified in subdivision (b), consistent with the Legislature’s intent to provide substantial protections for customers of the San Diego Gas and Electric Company and their interest in just and reasonable rates and adequate service.

“(e) For purposes of this section, “small commercial customer” includes, but is not limited to, all San Diego Gas and Electric Company accounts on Rate Schedule A of the San Diego Gas and Electric Company, all accounts of customers who are “general acute care hospitals,” as defined in Section 1250 of the Health and Safety Code, all San Diego Gas and Electric Company accounts of customers who are public or private schools for pupils in kindergarten or any of grades 1 to 12, inclusive, and all accounts on Rate Schedule AL-TOU under 100 kilowatts.

“(f) The commission shall establish a program for large commercial, agricultural, and industrial customers who buy energy from the San Diego Gas and Electric Company, on a voluntary basis, at the election of the

customer, to set the energy component of their bills at six and five-tenths cents (\$.065) per kilowatt hour with a true-up after a year.

“(g) The commission shall institute a proceeding to examine the prudence and reasonableness of the San Diego Gas and Electric Company in the procurement of wholesale energy on behalf of its customers, for a period beginning at the latest on June 1, 2000. If the commission finds that San Diego Gas and Electric Company acted imprudently or unreasonably, the commission shall issue orders that it determines to be appropriate affecting retail rates of San Diego Gas and Electric Company customers including, but not limited to, refunds.

SECTION 3.

“No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SECTION 4.

“The Legislature finds and declares that, due to the special circumstances surrounding the San Diego Gas and Electric Company, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

SECTION 5.

“Sections 1 to 4, inclusive, of this act shall become operative only if AB 970 of the 1999–2000 Regular Session is enacted and becomes operative on or before January 1, 2001.

SECTION 6.

“This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to provide timely relief to ratepayers in the service territory of the San Diego Gas and Electric Company suffering from a rapid increase

in retail energy rates due to spiraling wholesale energy costs, thereby endangering the public peace, health, and safety, it is necessary that this act take immediate effect.”

Discussion

First, we order SDG&E to put a ceiling of six and five-tenths cents (\$.065) per kWh on the energy rate component for residential, small commercial, and lighting customers.¹ This rate ceiling applies to small commercial customers, as defined in § 332.1(e). This rate ceiling is retroactive to June 1, 2000 and will extend to December 31, 2002. We will later determine whether it is in the public interest to extend this rate ceiling through December 2003 and whether any adjustments are required pursuant to § 332.1(d).

Second, in D.00-08-037, we authorized SDG&E to record any revenue shortfalls to a balancing account within the Transition Cost Balancing Account (TCBA) for future collection of these costs. On August 28, SDG&E filed Advice Letter 1249-E to establish the Interim Bill Stabilization Sub-Account within the TCBA. Consistent with our previous decision, SDG&E has set up the sub-account to ensure that any net revenues associated with utility-owned or managed generation assets will offset any undercollections associated with application of this stabilization plan. Conceptually, these procedures are consistent with the legislation. Other compliance matters in the advice letter may not conform to the legislation. Therefore, SDG&E should withdraw Advice Letter 1249-E and file a new advice letter pursuant to this decision.

¹ We emphasize that the energy rate component is subject to a ceiling of \$.065 cents per kWh. To the extent that the energy rate component is less than this amount, total rates for residential, small commercial, and lighting customers will be reduced.

We will review these procedures, any resulting undercollections, and the application of net revenues to offset these costs in SDG&E's Annual Transition Costs Proceeding (ATCP). On August 31, SDG&E requested a two-week extension of time to file its ATCP in order address issues raised in the legislation. The Executive Director granted this request. Therefore, SDG&E will file its ATCP on September 15, 2000 for the record period July 1, 1999 through June 30, 2000. SDG&E should also include the months of July and August 2000 in its ATCP application so that we can review the first three months of activity in this account. We place SDG&E on notice that further amendment of its application, including a phased approach, may be ordered in that docket.

Third, the legislation requires that we establish a proceeding to review the prudence and reasonableness of SDG&E's energy procurement practices for a period beginning not later than June 1, 2000. The ATCP affords us the opportunity to begin this reasonableness review. We direct SDG&E to include testimony related to this issue in its ATCP application . We direct the assigned administrative law judge (ALJ) in that proceeding to convene a prehearing conference (PHC) as soon as practicable after the protest period ends.

Section 332.1(f) requires that we establish a voluntary program for large commercial, agricultural, and industrial customers who buy energy from SDG&E, on a voluntary basis, to elect to set the energy component of their bills at six and five-tenths cents (\$.065) per kWh with a true-up after a year. Before implementing this provision, we will provide the opportunity for comments on establishing this program. Parties shall file comments fifteen days after the effective date of this decision. Parties shall file reply comments fifteen days after the comments are due.

Assembly Joint Resolution (AJR) 77, adopted by the Assembly and the Senate on August 31, 2000, directs the Electricity Oversight Board and this commission to take certain actions to address the “extraordinarily high electric costs” now facing California. Among other things, AJR 77 provides the following:

"Resolved, That the Public Utilities Commission, on or before September 21, 2000, shall issue an order instituting an investigation to review the impact of the current electricity crisis on consumers and those electrical corporations subject to the 'Section 368(a) rate freeze,' with emphasis on the options for correcting the electricity market, methods to eliminate price volatility for consumers, and methods of cost recovery and cost allocation..."

Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) are electrical corporations subject to the Section 368(a) rate freeze. The impact of the current electricity crisis on these utilities, along with the impact on consumers, is the subject of the investigation requested in AJR 77. The August 3, 2000 order instituting this investigation (OII) specifies that the investigation will address "wholesale electric markets and associated impact on electric rates." (OII, Ordering Paragraph 1.) The OII names PG&E and Edison as respondents as well as SDG&E. (*Id.*, Ordering Paragraph 2.) Thus, the issues that the Legislature asks us to investigate are arguably within the scope of this investigation. However, to ensure that full effect is given to the Legislative intent in AJR 77, we will order that the investigation be broadened to specifically include the issues raised in AJR 77.

Comments on Draft Decision

Rule 77.7 of the Commission’s Rules of Practice and Procedure provides for public review and comment for draft decisions and alternates subject to Pub.

Util. Code § 311(g). Rule 77.7(f) allows the Commission to reduce the period for public review and comment for alternates under various circumstances.² Rule 77.7(f)(9) specifically provides for an exemption:

For a decision where the Commission determines, on the motion of a party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, “public necessity” refers to circumstances in which the public interest of the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. “Public necessity” includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would place the Commission or a Commission regulatee in violation of applicable law, or where such failure would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver.

Pursuant to Rule 77.7(f)(9), we determine that public necessity requires a waiver of the period for public review and comment. We must implement the legislation as expeditiously as possible.

Findings of Fact

1. AB 265 was signed into law on September 6, 2000.
2. The legislation requires that we immediately establish a ceiling of six and five-tenths cents (\$.065) per kWh on the energy component of SDG&E’s electric

² Public review and comment on alternate decisions may be reduced but not waived, except in an unforeseen emergency situation.

rates for residential, small commercial, and streetlighting customers, retroactive to June 1, 2000 and to extend through December 31, 2002, at a minimum.

3. Small commercial customers are defined in § 332.1(e), and include those SDG&E customers on Rate Schedule A, all accounts of customers who are “general acute care hospitals,” as defined in Section 1250 of the Health and Safety Code, all accounts of customers who are public or private schools for pupils in kindergarten or any of grades 1 to 12, inclusive, and all accounts on Rate Schedule AL-TOU under 100 kilowatts.

4. On August 28, SDG&E filed Advice Letter 1249-E, which establishes the Interim Bill Stabilization sub-account in the TCBA.

5. The Executive Director granted SDG&E a two-week extension of time to file its next ATP application to address issues raised by legislation. SDG&E’s ATP application will be filed on September 15, 2000.

6. AJR 77 requests that the Commission investigate the impact of the current electricity crisis on consumers and those electrical corporations subject to the “Section 368(a) rate freeze,” with emphasis on the options for correcting the electricity market, methods to eliminate price volatility for consumers, and methods of cost recovery and cost allocation.

Conclusions of Law

1. It is reasonable to modify D.00-08-037 to expand the rate stabilization plan as directed in § 332.1.

2. To the extent newly-established § 332.1 reverses or changes D.00-08-037, that decision should be modified.

3. Conceptually, the Interim Bill Stabilization sub-account is consistent with that required by § 332.1(c).

4. The accounting procedures required by § 332.1(c) and the reasonableness review of procurement practices required by § 332.1(g) should be considered in SDG&E's ATCP. SDG&E should include the months of June and July 2000 in this application.

5. To the extent that the Federal Energy Regulatory Commission (FERC) requires refunds as a result of its findings, this Commission should ensure that those refunds are made to customers, pursuant to § 332.1(a)(2).

6. This investigation should be broadened to explicitly include the issues that the Legislature asks us to investigate in AJR 77.

7. Pursuant to Rule 77.7(f)(9), we determine that public necessity requires a waiver of the period for public review and comment.

8. This order should be effective today so that these rate changes may be implemented expeditiously.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 00-08-037 is modified to order San Diego Gas & Electric Company (SDG&E) to expand its bill stabilization plan as required by Pub. Util. Code § 332.1 for its residential, small commercial, and streetlighting customers.

2. To the extent that Assembly Bill (AB) 265 reverses or changes D.00-08-037, that decision is so altered.

3. SDG&E shall include information and testimony related to its Interim Bill Stabilization sub-account and the reasonableness review described in AB 265 in its Annual Transition Cost Proceeding (ATCP) application, as directed in this decision. The ATCP shall be filed on September 15, 2000.

4. Fifteen days from the effective date of this decision, respondents and parties shall file comments addressing the implementation of a voluntary program to establish a rate ceiling for large commercial, agricultural, and industrial customers, consistent with § 332.1(f). Fifteen days from the date comments are due, parties shall file reply comments.

5. Consistent with § 332.1(b), the ceiling on the energy rate component for residential, small commercial, and streetlighting customers shall apply to billing for energy consumed commencing on or after June 1, 2000. In order to implement this ceiling for the period prior to issuance of this decision, SDG&E shall provide a credit on future bills issued no later than October 15, 2000. The credit for each such customer shall consist of the amount previously billed in excess of the ceiling imposed by today's order. The credit shall be provided whether or not the customer has paid the prior bill. Concurrently with providing the bill credit, SDG&E shall record an equivalent amount in the Interim Bill Stabilization sub-account of its TCBA.

6. Within five days of the effective date of this decision, SDG&E shall withdraw Advice Letter 1249-E and file a new advice letter to modify the rate stabilization plan in compliance with § 332.1 and this decision. The advice letter and the supplement shall be effective on filing subject to Energy Division determining that it is in compliance with this decision.

7. This investigation includes a review of the impact of the current electricity crisis on consumers and those electrical corporations subject to the "Section 368(a) rate freeze," with emphasis on the options for correcting the electricity market, methods to eliminate price volatility for consumers, and methods of cost recovery and cost allocation.

This order is effective today.

Dated September 7, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners

I will file a concurrence.

/s/ HENRY M. DUQUE
Commissioner

I will file a concurrence.

/s/ RICHARD A. BILAS
Commissioner

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Commissioner Henry M. Duque, concurring:

Today's decision orders a rate stabilization plan beginning June 1, 2000 and which extends through December 31, 2002. In particular, it approves a series of rate caps for the ratepayers of San Diego Gas and Electric within certain usage levels. It makes allowances for the distinction between inland and coastal usage patterns as well. Because it reaches back to June 1, 2000, SDG&E is required to credit future bills to relieve San Diegans from the high prices they have experienced over the past three months and gives ratepayers some assurances as to their bill levels. I supported measures, such as these, at our emergency August 21st meeting.

I concur with the rate caps adopted today because the law requires it. However, today's action of the Commission forces SDG&E to accept undercollections larger than they've ever had, potentially jeopardizing their ability to acquire power. Further, by pricing all power at or below costs, the policies implemented today will keep demand high, and will aggravate and lengthen the power shortages.

Finally, without the adoption of a method for permitting SDG&E to recover revenue shortfalls, today's actions jeopardize SDG&E's credit rating and raise legitimate concerns that today's actions constitute unlawful taking of property by the Commission.

For these reasons, I must note my dissatisfactions with today's decision and respectfully concur.

/s/ HENRY M. DUQUE
Henry M. Duque
Commissioner

September 7, 2000

San Francisco

Richard A. Bilas, Commissioner, concurring:

I object strenuously to the inclusion in this order of the stranded cost issues raised in Assembly Joint Resolution 77 (Resolution). That Resolution is not binding law, merely a legislative request. The Resolution arose because the Legislature itself did not pass legislation being sought to deal with stranded costs. So it is trying to pass its task on to us. The Resolution requests that the Commission act on its request by September 21st. This gives us time to draft an order separate from today's. I believe that a separate Order Instituting Investigation (OII) covering the stranded cost issues raised in the Resolution should be placed on the September 21st agenda rather than hastily broadening this investigation to cover them. I do not believe the Commission should be dealing with changes to stranded cost methodologies. We are acting too much in haste and too much in a politicized climate and interfering too far into the operation of markets. I fear worse economic repercussions for ratepayers and utilities, rather than better ones.

I specifically believe that the stranded cost recovery implications of the current state of the market are a matter for the Legislature to resolve. The Legislature enacted AB 1890, which set the method for stranded cost recovery. AB 1890 established the rate freeze which is leading to the CTC undercollections of Edison and PG&E. It is the Legislature that should make the necessary changes in its methodology. The most the Commission should do regarding the stranded cost issues is to make a report to the Legislature. Stranded cost recovery is the Legislature's creation. We should not accept the task of resolving the problems it has caused in these markets by our acquiescence in what is, in essence, a legislative request, not legislation. If a separate OII on stranded costs were to be brought before us on September 21, I would vote against it. Were there time without causing a hold on this item, I would prepare alternate pages deleting this aspect of today's order. However, I will not vote against or delay the vehicle to

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commence implementation of real legislation, AB 265, which the Governor signed September 6th, just because I disagree with the Assembly Joint Resolution.

I also wish to state my unequivocal lack of support for a \$100 cap at the ISO that the Resolution also requests the Electricity Oversight Board to direct the ISO to implement. I hope the Board will think carefully before it acts.

I fear the end result of all of this tampering with market forces will be expanded FERC jurisdiction and contracted state control.

/s/ RICHARD A. BILAS
RICHARD A. BILAS
Commissioner

San Francisco, California
September 7, 2000